IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13435 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

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Appearance:

1. Special Civil Application No. 13435 of 1993

MR NAVIN K PAHWA for Petitioner.

Mr. L.R. Poojari, AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 31/03/2004

ORAL JUDGEMENT

The petitioner, who was at the relevant time serving as a Teacher and subsequently resigned, has preferred the present Special Civil Application under Article 226 of the Constitution of India challenging the order passed by the respondent No.2 State Government dated 9.9.1993 by which prayer of the petitioner for grant of pensionary benefit has been denied.

2. The petitioner was serving as an Assistant Teacher in Jyoti Vidhya Mandir High School Chandralaya, District-Dehgam. That he tendered resignation before the District Education Officer on 23.5.1980 and the same was sent to the institution, and by Resolution NO.7 dated 8.6.1980 the resignation of the petitioner was accepted and the petitioner was informed accordingly. That as the petitioner was not paid the pensionary benefit as well as other retiral benefits despite several representations the petitioner was constrained to approach the Gujarat Secondary Education Tribunal at Ahmedabad by way of Application No. 874 of 1990 and the same came to be disposed of by judgment and order dated 15.6.1993, and the Tribunal further held that if there is any dispute with the Government with regard to pensionary benefits, the applicant should approach the Government and before appropriate forum. It seems that thereafter the applicant has approached the State Government for pensionary benefits and the Deputy Secretary, Education Department by its communication/order dated 9th September 1993, has rejected the application of the petitioner for pensionary benefit on the ground that as the applicant has resigned voluntarily from the post he is not entitled to the pensionary benefits under Rule 250 of the Bombay Civil Services Rule and as the case of the petitioner does not fall under Rule 250 of the B.C.S.R. he is not entitled to pensionary benefits. The aforesaid order has given rise to the present Special Civil Application.

3. Mrs. Pahwa, ld. advocate for the petitioner has submitted that the authority has wrongly relied upon Rule 250 of the Bombay Civil Services Rules and Rule 250 of the B.C.S.R. does not apply in the facts and circumstances of the case and there is no provision in Rule 250 of the B.C.S.R. to the effect that if an employee voluntarily resigns he is not entitled to pension.

4. On the other hand, Mr. L.R. Poojari, ld. AGP has submitted that as the petitioner has voluntarily tendered resignation he is not entitled to the pensionary benefits, and he is otherwise also not entitled to the pensionary benefits.

5. Having heard the learned advocates appearing for the petitioners and after going into the provisions of Rule 250 of the Bombay Civil Services Rules, it seems that the respondent No.2 while passing the impugned order dated 9th September 1993, has wrongly relied upon the provisions of Rule 250 of the Bombay Civil Services Rules

and therefore under the circumstanes the impugned order dated 9th September 1993 requires to be quashed and set aside, and the respondent No.2 is directed to reconsider this decision with regard to grant of pensionary benefits to the petitioner in accordance with law. Such exercise should be done within a period of 4 weeks from the date of receipt this order. It is made clear that this Court has not expressed any opinion on merits of the case whether the application is entitled to the pensionary benefits or not. It is ultimately for the respondent No.2 to take decision on merits in accordance with law with regard to granting of pensionary benefits. Rule is made absolute to the aforesaid extent with no order as to costs.

rmr. [M.R. Shah, J.]